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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT SEATTLE**

10 **WENDY JENDRYSIK,**

11 Plaintiff,

12 vs.

13 **RECEIVABLES PERFORMANCE)**
14 **MANAGEMENT, LLC,**

15 Defendant.

) Case No.

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) **COMPLAINT AND JURY DEMAND**

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16 **NATURE OF ACTION**

17 1. This is an action brought pursuant to the Telephone Consumer Protection Act
18 (“TCPA”), 47 U.S.C. § 227 *et seq.* and the Fair Debt Collection Practices Act (“FDCPA”), 15
19 U.S.C. § 1692 *et seq.*
20

21 **JURISDICTION AND VENUE**

22 2. This Court has jurisdiction pursuant to 47 U.S.C. § 227(b)(3), 15 U.S.C. §
23 1692k(d), and 28 U.S.C. § 1331.

24 3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), as the acts
25 and transactions giving rise to Plaintiff’s action occurred in this district, and Defendant
26 transacts business in this district.
27

28 COMPLAINT FOR VIOLATIONS OF THE TELEPHONE
CONSUMER PROTECTION ACT AND FAIR
DEBT COLLECTION PRACTICES ACT-1

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PARTIES

4. Plaintiff Wendy Jendrysik (“Plaintiff”) is a natural person.

5. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

6. Defendant Receivables Performance Management, LLC (“Defendant”) is an entity who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. § 1692a(5).

7. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

8. Plaintiff is a natural person obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due, a creditor other than Defendant.

9. Plaintiff’s obligation, or alleged obligation, owed or due, or asserted to be owed or due, a creditor other than Defendant, arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes – namely a Verizon account (the “Debt”).

10. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, another.

11. In connection with the collection of an alleged debt in default, Defendant placed a call to Plaintiff’s cellular telephone on December 2, 2012 at 11:15 A.M., and at such time, Plaintiff demanded that Defendant cease and desist from placing any and all further calls to Plaintiff’s cellular telephone, and that she never be contacted on Sunday.

12. Despite Plaintiff's revocation of consent for Defendant to place any telephone calls to Plaintiff's cellular telephone, Defendant placed multiple non-emergency calls to Plaintiff's cellular telephone, including, but not limited to, the following dates and times:

- 1) December 12, 2012 at 11:04 A.M.;
- 2) December 12, 2012 at 5:37 P.M.;
- 3) December 13, 2012 at 12:09 P.M.;
- 4) December 14, 2012 at 9:29 A.M.;
- 5) December 15, 2012 at 1:23 P.M.;
- 6) December 17, 2012 at 9:47 A.M.;
- 7) December 18, 2012 at 8:59 A.M.;
- 8) December 18, 2012 at 12:02 P.M.;
- 9) December 18, 2012 at 2:20 P.M.;
- 10) December 19, 2012 at 10:48 A.M.;
- 11) December 19, 2012 at 12:22 P.M.;
- 12) December 20, 2012 at 11:05 A.M.;
- 13) December 22, 2012 at 2:17 P.M.;
- 14) December 26, 2012 at 11:39 A.M.;
- 15) December 26, 2012 at 8:53 A.M.;
- 16) December 26, 2012 at 12:48 P.M.;
- 17) December 27, 2012 at 8:24 A.M.;
- 18) December 27, 2012 at 12:13 P.M.;
- 19) December 27, 2012 at 1:02 P.M.;
- 20) December 27, 2012 at 5:16 P.M.;
- 21) December 28, 2012 at 8:28 A.M.;
- 22) December 28, 2012 at 10:10 A.M.;
- 23) December 28, 2012 at 11:33 A.M.;
- 24) December 30, 2012 at 11:11 A.M.;
- 25) December 31, 2012 at 8:08 A.M.;
- 26) December 31, 2012 at 9:49 A.M.;
- 27) January 2, 2013 at 11:30 A.M.
- 28) January 3, 2013 at 11:52 A.M.
- 29) January 3, 2013 at 8:30 A.M.
- 30) January 4, 2013 at 9:18 A.M.
- 31) January 5, 2013 at 10:22 A.M.
- 32) January 7, 2013 at 9:06 A.M.
- 33) January 7, 2013 at 11:01 A.M.
- 34) January 9, 2013 at 11:51 A.M.;
- 35) January 9, 2013 at 12:09 P.M.;
- 36) January 9, 2013 at 12:53 P.M.;
- 37) January 9, 2013 at 2:35 P.M.;
- 38) January 10, 2013 at 9:38 A.M.;

39) January 10, 2013 at 12:53 P.M.;
40) January 11, 2013 at 10:19 A.M.;
41) January 13, 2013 at 3:02 P.M.;
42) January 14, 2013 at 12:14 P.M.;
43) January 15, 2013 at 8:28 A.M.;
44) January 15, 2013 at 1:59 P.M.;
45) January 17, 2013 at 10:00 A.M.;
46) January 17, 2013 at 11:24 A.M.;
47) January 17, 2013 at 11:24 A.M.;
48) January 17, 2013 at 10:00 A.M.;
49) January 18, 2013 at 3:56 P.M.;
50) January 28, 2013 at 9:00 A.M.;
51) January 26, 2013 at 10:12 A.M.;
52) January 30, 2013 at 5:26 P.M.;
53) January 29, 2013 at 5:24 P.M.;
54) January 31, 2013 at 10:29 A.M.;
55) January 31, 2013 at 9:58 A.M.;
56) January 31, 2013 at 2:21 P.M.;
57) February 4, 2013 at 10:00 A.M.;
58) February 5, 2013 at 5:26 P.M.;

13. During several of the above-referenced telephone calls, Plaintiff picked up the phone and listened to a pre-recorded message from Defendant.

14. Upon information and good-faith belief, the telephone calls identified above were placed to Plaintiff's cellular telephone using an automatic telephone dialing system.

15. Defendant did not place any telephone calls to Plaintiff for emergency purposes.

16. Defendant did not have Plaintiff's prior express consent to make any telephone calls to Plaintiff's cellular telephone.

17. Upon information and good-faith belief, Defendant placed the telephone calls to Plaintiff identified above voluntarily.

18. Upon information and good-faith belief, Defendant placed the telephone calls to Plaintiff identified above under its own free will.

19. Upon information and good-faith belief, Defendant had knowledge that it was

1 using an automatic telephone dialing system to make and/or place each of the telephone calls
2 identified above.

3 20. Upon information and good-faith belief, Defendant intended to use an automatic
4 telephone dialing system to make and/or place each of the telephone calls identified above.
5

6 21. Upon information and good-faith belief, Defendant maintains business records
7 that show all calls Defendant placed to Plaintiff's cellular telephone number.

8 22. On January 27, 2013, in connection with the collection of an alleged debt in
9 default, Defendant sent Plaintiff an email correspondence.
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11 23. In its January 27, 2013 correspondence Defendant failed to notify Plaintiff that
12 the communication was from a debt collector.

13 24. In failing to disclose in its January 27, 2013 email message that the
14 communication was from a debt collector, Defendant failed to meaningfully disclose its
15 identity to Plaintiff.
16

17 25. Despite Plaintiff's requests that she not be called on Sundays, Defendant placed
18 calls to her on Sunday December 30, 2012, as well as Sunday January 13, 2013.

19 **COUNT I**
20 **VIOLATION OF 47 U.S.C. § 227(b)(1)(A)(iii)**

21 26. Plaintiff repeats and re-alleges each and every factual allegation contained
22 above.

23 27. Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii) by willfully and knowingly
24 placing non-emergency calls to Plaintiff's cellular telephone, without the prior express consent
25 of Plaintiff, using an automatic telephone dialing system and/or an artificial or pre-recorded
26 voice.
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1 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 2 a) Adjudging that Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii);
- 3 b) Enjoining Defendant from placing any further telephone calls to Plaintiff in
- 4 violation of the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(A);
- 5 c) Awarding Plaintiff statutory damages in the amount of \$500.00 per violation,
- 6 pursuant to 47 U.S.C. § 227(b)(3)(B);
- 7 d) Awarding Plaintiff actual damages, pursuant to 47 U.S.C. § 227(b)(3)(B);
- 8 e) Awarding Plaintiff treble damages, pursuant to 47 U.S.C. § 227(b)(3);
- 9 f) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;
- 10 g) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by
- 11 law; and
- 12 h) Awarding such other and further relief as the Court may deem just and proper.
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16 **COUNT II**

17 **VIOLATION OF 15 U.S.C. § 1692d(6)**

18 28. Plaintiff repeats and re-alleges each and every allegation contained above.

19 29. Defendant violated 15 U.S.C. § 1692d(6) by sending email messages to Plaintiff

20 without meaningfully disclosing the sender's identity.

21 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 22 a) Adjudging that Defendant violated 15 U.S.C. § 1692d(6);
- 23 b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A),
- 24 in the amount of \$1,000.00;
- 25 c) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;
- 26 d) Awarding Plaintiff any pre-judgment and post-judgment interest as may be
- 27

allowed under the law;

e) Awarding such other and further relief as the Court may deem just and proper.

COUNT III
VIOLATION OF 15 U.S.C. § 1692e(11)

30. Plaintiff repeats and re-alleges each and every allegation contained above.

31. Defendant violated 15 U.S.C. § 1692e(11) by failing to notify Plaintiff during each collection contact that the communication was from a debt collector.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

a) Adjudging that Defendant violated 15 U.S.C. § 1692e(11);

b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A),
in the amount of \$1,000.00;

c) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;

d) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;

e) Awarding such other and further relief as the Court may deem just and proper.

COUNT IV
VIOLATION OF 15 U.S.C. § 1692c(a)(1)

32. Plaintiff repeats and re-alleges each and every factual allegation above.

33. Defendant violated 15 U.S.C. § 1692c(a)(1) by communicating with Plaintiff at times or places which were known or should have been known to be inconvenient for Plaintiff.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

a) Adjudging that Defendant violated 15 U.S.C. § 1692c(a)(1);

- 1 b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A),
2 in the amount of \$1,000.00;
3 c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
4 d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action
5 pursuant to 15 U.S.C. § 1692k(a)(3);
6 e) Awarding Plaintiff any pre-judgment and post-judgment interest as may be
7 allowed under the law;
8 f) Awarding such other and further relief as the Court may deem just and proper.
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11 **TRIAL BY JURY**

12 34. Plaintiff is entitled to and hereby demands a trial by jury.
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14 Dated: March 27, 2013.

15 Respectfully submitted,

16 s/Jon N. Robbins

17 Jon N. Robbins WSBA#28991

18 WEISBERG & MEYERS, LLC

19 Attorney for Plaintiff
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